IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.465 of 2006
in
Notice of Motion No.1284 of 2006
in
Suit .No. 924 of 2001

Anil K Bodani and Anr ..**Appellants**
vs
Manju Meadows Private Ltd and ors.. ..**Respondents**

Mr. Venkatesh Dhond i/b N S Himayatullah for the appellants

Mr Cyrus Ardeshir i/b Kanga and Co for respondent No.l

Mr. K. R.Khatta i/b S.A.Shah Associates for respondent No.2

Mr. Subodh Joshi with Ms Prachi Khandge for respondent Nos3,11, and 12.

Ms Chaitali Gandhi i/b Shiralkar & Co. for respondent No.21

CORAM: KSHITIJ R. VYAS, C.J., & ABHAY S. OKA,J.

DATE: JULY 11, 2006.

P.C.:-

In October 2004 one M/s Balaji Hotels and Enterprises Ltd. filed a summary suit against the respondent No.1 company being Summary Suit No.3304 of 2004 before this court seeking a money decree in the sum of Rs.20 lacs and costs. It appears that the first respondent did not file its

appearance or any affidavit seeking leave to defend the said summary suit and hence the said suit was decreed exparte by this court vide order dated 24th October, 2005. The appellants who claim to be shareholders and members of the lst respondent company, learnt about the said exparte decree, moved the notice of motion in the above suit inter alia seeking leave to the appellants to institute proceedings in the name of and on behalf of the 1st respondent company to set aside and/or challenge the said exparte decree. The learned single Judge vide his order dated 4th May, 2006 rejected the said notice of motion holding that no ad-interim relief can be granted to the appellants since it is disputed as to whether the appellants are in fact majority shareholders.

We have heard the learned counsel for the parties. / The appellant No.1 claims to own 17,990 shares of the 1st respondent company and appellant No.2 claims to own 7000 shares of the 1st respondent company. The aggregate shareholding of the appellants is thus 24,990 shares which constitutes 99.96% of the total issue, shubscribed and paid up share capital of the 1st respondent company and therefore they are interest in the 1st respondent company. Since the appellants are apponited as agents of the stud farm and since affidavit is filed on behalf of the 1st respondent company, the appellants

took out the Notice of Motion No.1284 of 2006 with a view to see that the company is revived. The learned counsel asserted the claim of the appellants in the notice of motion and the only relief claimed is for grant of leave to the appellants to institute proceedings in the name and on behalf of the 1st respondent company to set aside and/or challenge the exparte decree dated 24th October, 2005 passed by the learned single Judge of this court. It is also prayed for grant of ad-interim relief in terms of the aforesid prayer clause (a) of the notice of motion. If the reliefs prayed for in the said notice of motion is granted ti would amount in granting the entire relief, without giving any opportunity to the other side to file reply and put in their say in the matter.

After considering the fact that the Receiver has already been appointed of the suit property of the company being a stud farm; it is still to be decided whether the appellants are in fact majority shareholders, since the appellants are not directors of the company the appellants cannot seek any ad-interim relief, the learned Judge has rightly rejected the prayer in the notice of motion. We therefore see no merits in the appeal and the same is dismissed.

However, considering the facts and circumstances of the case, hearing of the Notice of Motion No.1284 of 2006 is

expedited.

CHIEF JUSTICE

ABHAY S. OKA, J.